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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,162	12/08/2000	James L. Overbeck		2367

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EXAMINER

SMITH, ZANDRA V

ART UNIT	PAPER NUMBER
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2877

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/733,162

Applicant(s)

OVERBECK ET AL.

Examiner

Zandra V. Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 66, 69-76, 80-84, 86 and 87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 74-76, 86 and 87 is/are allowed.
- 6) ☒ Claim(s) 66 and 80-84 is/are rejected.
- 7) ☒ Claim(s) 69-73 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-8, 10-14, 16 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Preliminary Amendment*

The Preliminary amendment filed 12 September 2002 has been entered.

### *Specification*

The disclosure is objected to because of the following informalities: insufficient margins have resulted in mutilation of the specification. Appropriate correction is required.

### *Claim Objections*

Claims 80-84 are objected to because of the following informalities: there is not antecedent for "said member" in claim 80. Claims 81-84 are included for their dependence on claim 80. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 80 is rejected under 35 U.S.C. 102(b) as being anticipated by *Graham et al.* (5,177,694).

As to **claim 80**, Graham discloses a computerized color matching system, comprising:  
a body (13) defining a cavity through which illumination passes, the body of a predetermined length and an illumination reference area in the filed of view (see fig. 2, col. 4, lines 5-10 and lines 47-65).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 66 and 81-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over

***Graham et al. (5,177,694).***

As to **claim 66**, Graham discloses a computerized color matching system, comprising:

a body (13) with an aperture (15);

means (21) for engaging the body against a measuring device (11) (col. 4, lines 15-20 and 40-45); and

a reference area (col. 4, lines 47-68) secured to the body proximate the aperture and within the field of view. Graham differs from the claimed invention in that the engaging means is not disclosed as providing a light tight seal, however since the camera is used to take photographs (col. 3, lines 62-67) of the teeth and ambient light would interfere or ruin the photograph, it would have been obvious to one having ordinary skill in the art at the time of invention to ensure that the engaging means provides a light tight seal.

As to **claim 81**, Graham discloses everything claimed, as applied above, in addition the shield is releasably secured (col. 4, lines 15-21).

As to **claim 82**, Graham discloses everything claimed, as applied above, with the exception a disposable shield, however it would have been obvious to one having ordinary skill

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in the art at the time of invention to make a disposable shield to prevent contamination from patient to patient.

As to **claim 83**, Graham discloses everything claimed, as applied above, in addition a light box is provided (25, col. 4, line 22). Although Graham fails to state that the light box blocks ambient light, it would have been obvious to one having ordinary skill in the art at the time of invention since the camera is used to take photographs (col. 3, lines 62-67).

As to **claim 84**, Graham discloses everything claimed, as applied above, in addition indicator means for providing information is provided (coll. 4, lines 47-65).

#### *Allowable Subject Matter*

Claims 74-76 and 86-87 are allowable over the prior art of record.

Claims 69-73 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record, taken alone or in combination, fails to disclose or render obvious indicator means, for providing patient information, expiration date of shield, etc, in the field of view, a second aperture proximate an illumination source, a light source and camera within a housing and removably attached to a disposable shield.

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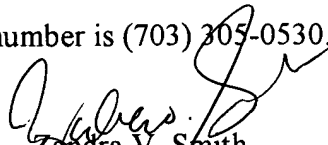
*Fax/Telephone Information*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zandra V. Smith whose telephone number is (703) 305-7776.

The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on (703)308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0530.

  
Zandra V. Smith  
Primary Examiner  
Art Unit 2877

June 13, 2003